

**Introduced by Senator Hughes**

February 25, 1999

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An act to amend Section 7163 of, and to add Section 7169 to, the Business and Professions Code, and to amend Section 8214.2 of the Government Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

SB 865, as introduced, Hughes. Real property.

Existing law specifies certain requirements as to the enforceability of home improvement contracts but does not specifically make a violation of those requirements a crime.

This bill would provide that a violation of those provisions by a licensed home improvement contractor or person subject to licensure, or by his or her agent or salesperson is a misdemeanor. It would also provide that a contractor, responsible managing officer, responsible managing employee, or home improvement salesperson who in the course of business engages in a pattern and practice of conduct prohibited under the home improvement provisions is guilty of a misdemeanor or felony, as specified.

Existing law provides that a notary public who knowingly and willfully with intent to defraud performs any notarial act in relation to a deed of trust on real property, as specified, is guilty of a felony.

This bill would provide that a notary public who, in relation to any document or instrument which affects title to, places an encumbrance on, places an interest served by a mortgage deed or trust on, or reconveys a mortgage or deed of trust on

real property, or knowingly and willfully makes a false statement, as specified, is guilty a felony or misdemeanor.

This bill, by expanding the scope of an existing crime and by creating new crimes, would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7163 of the Business and  
2 Professions Code is amended to read:

3 7163. (a) No contract for home improvement shall  
4 be enforceable against the buyer if the obtaining of a loan  
5 for all or a portion of the contract price is a condition  
6 precedent to the contract or if the contractor provides  
7 financing, or in any manner assists the buyer to obtain a  
8 loan or refers the buyer to any person who may loan or  
9 arrange a loan for all or a portion of the contract price  
10 unless all of the following requirements are satisfied:

11 (1) The third party, if any, agrees to make the loan.

12 (2) The buyer agrees to accept the loan or financing.

13 (3) The buyer does not rescind the loan or financing  
14 transaction, within the period prescribed for rescission,  
15 pursuant to the federal Truth in Lending Act (15 U.S.C.  
16 Sec. 1601 et seq.) or Regulation Z, if applicable.

17 (b) Until the requirements of paragraphs (1), (2), and  
18 (3) of subdivision (a) are satisfied, it shall be unlawful for  
19 the contractor to do any of the following:

20 (1) Deliver any property or perform any services  
21 other than obtaining building permits or other similar  
22 services preliminary to the commencement of the home  
23 improvement for which no mechanic's lien can be  
24 claimed.



1 (2) Represent in any manner that the contract is  
2 enforceable or that the buyer has any obligation  
3 thereunder.

4 Any violation of this subdivision shall render the  
5 contract unenforceable.

6 (c) If the contract is unenforceable pursuant to  
7 subdivision (a) or subdivision (b), the contractor shall  
8 immediately and without condition return all money,  
9 property, and other consideration given by the buyer. If  
10 the buyer gave any property as consideration and the  
11 contractor does not or cannot return it for whatever  
12 reason, the contractor shall immediately return the fair  
13 market value of the property or its value as designated in  
14 the contract, whichever is greater. Nothing herein shall  
15 prohibit a contractor from receiving a downpayment  
16 otherwise permitted by law provided the contractor  
17 returns the downpayment as herein required if the  
18 contract is unenforceable pursuant to subdivision (a) or  
19 (b).

20 (d) (1) Except as provided in paragraph (2), the  
21 buyer may retain without obligation in law or equity any  
22 services or property provided pursuant to a contract that  
23 is unenforceable pursuant to subdivision (a) or  
24 subdivision (b).

25 (2) If the contractor has delivered any property to the  
26 buyer pursuant to a contract which is unenforceable  
27 pursuant to subdivision (a) or subdivision (b), the buyer  
28 shall make the property available to the contractor for  
29 return provided that all of the following requirements are  
30 satisfied:

31 (A) The property can be practically returned to the  
32 contractor without causing any damage to the buyer.

33 (B) The contractor, at the contractor's expense, first  
34 returns to the buyer any money, property, and other  
35 consideration taken by the contractor provided that the  
36 property is returned in the condition that it was in  
37 immediately prior to its taking. If applicable, the  
38 contractor shall also, at its expense, reinstall any property  
39 taken in the manner in which the property had been  
40 installed prior to its taking.

1 (C) The contractor, at the contractor's expense, picks  
2 up the property within 60 days of the execution of the  
3 contract.

4 (e) For the purpose of this section, "home  
5 improvement" means "home improvement" as defined  
6 in Section 7151. Goods are included within the definition  
7 notwithstanding whether they are to be attached to real  
8 property or to be so affixed to real property as to become  
9 a part thereof whether or not severable therefrom.

10 (f) The rights and remedies provided the buyer under  
11 this section are nonexclusive and cumulative to all other  
12 rights and remedies under other laws.

13 (g) Any waiver of this section shall be deemed  
14 contrary to public policy and shall be void and  
15 unenforceable. However, the buyer may waive  
16 subdivisions (a) and (b) to the extent that the contract is  
17 executed in connection with the making of emergency  
18 repairs or services that are necessary for the immediate  
19 protection of persons or real or personal property. The  
20 buyer's waiver for emergency repairs or services shall be  
21 in a dated written statement that describes the  
22 emergency, states that the contractor has informed the  
23 buyer of subdivisions (a) and (b) and that the buyer  
24 waives those provisions, and is signed by each owner of  
25 the property. Waivers made on printed forms are void  
26 and unenforceable.

27 *(h) A violation of this section by a licensee, or a person*  
28 *subject to licensure under this chapter, or by his or her*  
29 *agent or salesperson, is a misdemeanor punishable by a*  
30 *fine of not less than one hundred dollars (\$100) nor more*  
31 *than five thousand dollars (\$5,000), or by imprisonment*  
32 *in a county jail not exceeding one year, or by both that*  
33 *fine and imprisonment.*

34 SEC. 2. Section 7169 is added to the Business and  
35 Professions Code, to read:

36 7169. A contractor, responsible managing officer,  
37 responsible managing employee, or home improvement  
38 salesperson who in the course of business engages in a  
39 pattern and practice of conduct prohibited by any section  
40 of this article and which is otherwise punishable as a

1 misdemeanor shall be punished by imprisonment in state  
2 prison or by imprisonment in a county jail not exceeding  
3 one year.

4 SEC. 3. Section 8214.2 of the Government Code is  
5 amended to read:

6 8214.2. (a) *A notary public who, in relation to any*  
7 *document or instrument which affects title to, places an*  
8 *encumbrance on, places an interest secured by a*  
9 *mortgage or deed of trust on, or reconveys a mortgage or*  
10 *deed of trust on real property, knowingly and willfully*  
11 *makes a false statement in a certificate of*  
12 *acknowledgment that one or more persons have*  
13 *personally appeared before that notary and*  
14 *acknowledged the execution of the document or*  
15 *instrument or that the notary personally knows or has*  
16 *satisfactory evidence of the identity of the persons*  
17 *making the acknowledgment within the meaning of*  
18 *Section 1185 of the Civil Code, shall be punished by*  
19 *imprisonment in the state prison or by imprisonment in*  
20 *a county jail not exceeding one year.*

21 (b) *A notary public who knowingly and willfully with*  
22 *intent to defraud performs any notarial act in relation to*  
23 *a document or instrument which affects title to,*  
24 *places an encumbrance on, places an interest secured by*  
25 *a mortgage or deed of trust on, or reconveys a mortgage*  
26 *or deed of trust on real property consisting of a*  
27 *single-family residence containing not more than four*  
28 *dwelling units, with knowledge that the deed of trust*  
29 *contains any false statements or is forged in whole or in*  
30 *part, is guilty of a felony.*

31 SEC. 4. No reimbursement is required by this act  
32 pursuant to Section 6 of Article XIII B of the California  
33 Constitution because the only costs that may be incurred  
34 by a local agency or school district will be incurred  
35 because this act creates a new crime or infraction,  
36 eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section  
38 17556 of the Government Code, or changes the definition

- 1 of a crime within the meaning of Section 6 of Article
- 2 XIII B of the California Constitution.

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